

Alerts & Publications



Treasury Issues Interim Rule for CFIUS Filing Fees

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On April 22, 2020, the Treasury Department issued an [interim rule](#), effective May 1, 2020, establishing filing fees for parties filing formal written notices of transactions for review by the Committee on Foreign Investment in the United States (CFIUS). The interim rule largely tracks the [proposed rule](#) published on March 9, 2020, described in our prior alert—[Treasury Issues Proposed Rule for CFIUS Filing Fees](#)—which set out proposed filing fees authorized by the Foreign Investment Risk Review Modernization Act of 2018. Recognizing the challenges posed by the coronavirus pandemic during the comment period for the proposed rule, the Treasury Department issued the rule as an interim rule, and the public may submit additional comments through June 1, 2020.

Scope of Filing Fee Requirement

Pursuant to the interim rule, all notices for “covered transactions” under 31 C.F.R. Part 800 and “covered real estate transactions” under 31 C.F.R. Part 802 will be subject to the same set of filing fees up to \$300,000, depending on the value of the transaction. The new filing fees apply to all formal notices submitted to CFIUS on or after May 1, 2020, including in cases where parties filed a draft notice prior to May 1. CFIUS will continue to review and provide comments on draft notices without a fee.

The new filing fees apply only to notices, including notices filed in lieu of mandatory declarations and notices filed following CFIUS review of a declaration where CFIUS requests the parties file a notice or informs the parties that it is not able to conclude action on the basis of the declaration. CFIUS will not charge a fee for mandatory or voluntary declarations, or for any unilateral review of a transaction initiated by CFIUS. CFIUS also will not assess a second filing fee for notices that parties withdraw and refile unless the Staff Chairperson determines there was a material change to the transaction or a material inaccuracy or omission in the original notice.

Generally, until CFIUS receives the filing fee, CFIUS will not formally accept a notice and begin its review of a transaction. CFIUS may, however, waive the filing fee, in whole or in part, if “extraordinary circumstances” warrant such a waiver. Refunds may also be available in certain circumstances, such as where CFIUS determines the transaction is not a “covered transaction” or “covered real estate transaction.”

Filing Fee Amounts

The fee schedule, which remains unchanged from the proposed rule, is based on the value of the transaction that is the subject of the notice:

Transaction Value Range	Filing Fee
Less than \$500,000	No fee
\$500,000 or greater but less than \$5 million	\$750
\$5 million or greater but less than \$50 million	\$7,500
\$50 million or greater but less than \$250 million	\$75,000
\$250 million or greater but less than \$750 million	\$150,000
\$750 million or greater	\$300,000

Calculation of Transaction Value

The interim rule describes how to determine the value of the transaction in order to determine the applicable fee. Generally, the value of a transaction will be the total value of all consideration paid by the foreign person that is party to the transaction, including cash, assets, shares, debt forgiveness, and services. Where a transaction includes non-US businesses, the total value of the transaction generally will be assessed on a global basis, not just the value of the US business within the scope of CFIUS jurisdiction.

However, there is an exception for transactions in which the value of the transaction is equal to or greater than \$5,000,000, but the value of the interests or rights acquired in the US business is less than \$5,000,000. In such cases, the fee will be \$750.

This memorandum is a summary for general information and discussion only and may be considered an advertisement for certain purposes. It is not a full analysis of the matters presented, may not be relied upon as legal advice, and does not purport to represent the views of our clients or the Firm. Greta Lichtenbaum, an O'Melveny partner licensed to practice law in the District of Columbia, Theodore W. Kassinger, an O'Melveny of counsel licensed to practice law in the District of Columbia and Georgia, Mary Pat Dwyer, an O'Melveny counsel licensed to practice law in the District of Columbia and Pennsylvania, David J. Ribner, an O'Melveny counsel licensed to practice law in the District of Columbia and New York, and Paras Shah, an O'Melveny law clerk, contributed to the content of this newsletter. The views expressed in this newsletter are the views of the authors except as otherwise noted.

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